

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ESSEX P.B. & R. CORP.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:08CV01705 ERW
	)	
XCAPER INDUSTRIES, LLC,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter comes before the Court on Xcaper Industries, LLC's Claim for Fees and Costs [doc. #52].

On August 26, 2009, this Court issued an Order [doc. #57], conditionally granting Plaintiff Essex P.B. & R. Corp.'s Voluntary Motion to Dismiss. The Court imposed the following condition: "in the event that Plaintiff refiles this case in this or any other court, it will be required to reimburse the fees and costs incurred by Defendant in defending this cause of action." (Order, doc. #57, p.1). Defendant has submitted its Claim for Fees and Costs, seeking a total of \$42,403.93,<sup>1</sup> in the event that Plaintiff refiles this case. Plaintiff opposes many of the fees and costs sought by Defendant. This Court held a hearing on this matter on August 13, 2009, and heard arguments from both Parties.

The Court has thoroughly reviewed each of the fees and costs requested by Defendant. Considering that Defendant can only be reimbursed for "expenses incurred in preparing work

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<sup>1</sup>In the Claim for Fees and Costs, Defendant states that it seeks a total of \$42,373.93. The Court's calculations show that Defendant has actually requested \$42,403.93.

product that will not be useful in subsequent litigation of the same claim,” *Cauley v. Wilson*, 752 F.2d 769, 772 (7th Cir. 1985), the Court finds as follows:

<b>Date</b>	<b>Time-keeper</b>	<b>Description</b>	<b>Hours</b>	<b>Amount Sought</b>	<b>Allowed or Denied</b>
11/13/2008	Tom Van Hoozer	Telephone conference with Peter Finch regarding lawsuit filed in E.D. of Mo., obtain prints of Scott’s facemask and Xcaper personal care mask online, telephone conference with attorney Janoski.	0.90	\$319.50	Allowed (objection overruled)
11/14/2008	Tom Van Hoozer	Letter to Peter Finch to report initial contact with Attorney Janoski for Essex PB&R.	0.20	\$71.00	Allowed (no objection)
11/18/2008	Justin Crawford	Review of filed pleadings and docketing of dates for future attorney reference.	0.40	\$42.00	Allowed (no objection)
11/19/2008	Tom Van Hoozer	Work on motion for admission pro hac vice and report on status of communications and response to Mr. Finch.	0.40	\$142.00	Allowed (no objection)
11/24/2008	Tom Van Hoozer	Review specimens sent by Mr. Finch of Xcaper Personal Smoke Mask and letter to Attorney Janoski for Essex PB&R seeking dismissal of litigation.	0.60	\$213.00	Allowed (no objection)
11/25/2008	Justin Crawford	Phone calls placed to Judge Webber’s clerk regarding an update to our Motion for Admittance.	0.40	\$42.00	Allowed (objection overruled)
11/25/2008	Tom Van Hoozer	Telephone conference with Mr. Janoski regarding our letter advising of likely Rule 11 motion and report to Mr. Finch.	0.40	\$142.00	Allowed (objection overruled)

11/26/2008	Justin Crawford	Correspondence with Clerk of the Court regarding registration of e-filing for Mr. Van Hoozer.	0.30	\$31.50	Allowed (objection overruled)
12/2/2008	Justin Crawford	Correspondence with Judge Webber's clerk regarding initial filing of pleadings, per Mr. Van Hoozer's request.	0.30	\$31.50	Allowed (objection overruled)
12/2/2008	Tom Van Hoozer	Research regarding affirmative defenses; work on answer to complaint for patent infringement.	2.30	\$816.50	Allowed (objection overruled)
12/3/2008	Justin Crawford	File Answer and Disclosure of Corporation Interests Certificate.	0.60	\$63.00	Allowed (no objection)
12/3/2008	Tom Van Hoozer	Telephone conference with Mr. Finch [redacted]; research regarding laches and estopped affirmative defenses; finalize and file answer to patent infringement complaint.	1.50	\$532.50	Allowed (objection overruled)
12/4/2008	Justin Crawford	Review the Scheduling Order from the Court and docket applicable dates for future attorney reference.	0.40	\$42.00	Allowed (no objection)
12/4/2008	Tom Van Hoozer	Review scheduling order issued by the Court.	0.40	\$142.00	Allowed (no objection)
12/4/2008	Tom Van Hoozer	Review prosecution file history of patent-in-suit, order copy of file history of patent application.	1.00	\$355.00	Allowed (objection overruled)
12/9/2008	Tom Van Hoozer	Review order for scheduling conference and Essex draft of scheduling order.	0.90	\$319.50	Allowed (no objection)
12/10/2008	Tom Van Hoozer	Telephone conference with Peter Finch regarding [redacted].	0.10	\$35.50	Allowed (objection overruled)

12/11/2008	Tom Van Hoozer	Telephone conference with opposing counsel per Rule 46 to discuss Joint Proposed Scheduling Order.	0.50	\$177.50	Allowed (no objection)
12/12/2008	Tom Van Hoozer	Review revised scheduling order and reply to attorney Janoski for filing.	0.20	\$71.00	Allowed (no objection)
12/15/2008	Justin Crawford	Review Joint Proposed Scheduling Plan and docket dates for future reference.	0.50	\$52.50	Allowed (no objection)
12/18/2008	Tom Van Hoozer	Rule 16 Scheduling Conference with Judge Webber and opposing counsel, conducted by telephone.	0.30	\$106.50	Allowed (no objection)
12/19/2008	Tom Van Hoozer	Rule 16 Scheduling Conference with Judge Webber and opposing counsel, conducted by telephone.	0.30	\$106.50	Denied (objection sustained)
12/22/2008	Justin Crawford	Review of Case Management Order and docketing of dates for future attorney reference.	0.40	\$42.00	Allowed (no objection)
1/2/2009	Tom Van Hoozer	Prepare letter to Mr. Finch [redacted].	0.50	\$177.50	Allowed (objection overruled)
1/12/2009	Tom Van Hoozer	Telephone conference with Essex attorney Janoski regarding requested extension of time to answer discovery.	0.20	\$71.00	Allowed (no objection)
1/13/2009	Justin Crawford	Review of filed pleadings and discovery and docketing of dates for future attorney reference.	0.40	\$42.00	Allowed (no objection)
1/15/2009	Justin Crawford	Review of Court's Order and docketing of dates for future attorney reference.	0.20	\$21.00	Allowed (no objection)
1/27/2009	Justin Crawford	Prepare and forward Defendant's Initial Disclosures.	0.30	\$31.50	Allowed (objection overruled)

1/27/2009	Tom Van Hoozer	Review initial disclosures of Essex PB&R and forward to Mr. Finch.	0.20	\$71.00	Allowed (objection overruled)
1/28/2009	Justin Crawford	Review and indexing of filed discovery for future attorney reference.	0.30	\$31.50	Allowed (objection overruled)
1/28/2009	Tom Van Hoozer	Telephone conference with Mr. Finch to discuss initial disclosures of Plaintiff.	0.30	\$106.50	Allowed (objection overruled)
2/11/2009	Justin Crawford	Review of filed discovery pleadings and indexing for future attorney reference.	0.30	\$31.50	Denied (objection sustained)
2/13/2009	Justin Crawford	Review of filed discovery documents and indexing for future attorney reference.	0.30	\$31.50	Denied (objection sustained)
2/13/2009	Tom Van Hoozer	Telephone conference with Mr. Finch [redacted].	0.30	\$106.50	Allowed (objection overruled)
2/19/2009	Tom Van Hoozer	Review e-mail from opposing counsel regarding suggested mediator, check background of mediator, [redacted].	0.30	\$106.50	Allowed (objection overruled)
3/2/2009	Tom Van Hoozer	Telephone conference with Mr. Finch regarding [redacted]; review Army manual, telephone conference with opposing counsel regarding mediation date.	0.20	\$71.00	Allowed (objection overruled)
3/18/2009	Justin Crawford	Review of filed pleadings and docketing of dates for future attorney reference.	0.40	\$48.00	Allowed (no objection)
3/18/2009	Tom Van Hoozer	Forward Plaintiff's first interrogatories and first requests for production to Mr. Finch.	0.30	\$106.50	Allowed (objection overruled)
3/25/2009	Tom Van Hoozer	Prepare and forward to opposing counsel Defendant's proposed terms for claim construction.	2.70	\$958.50	Allowed (objection overruled)

3/26/2009	Tom Van Hoozer	Telephone conference with Mr. Finch, review plaintiff's first interrogatories and first request for production of documents to Defendant.	0.90	\$319.50	Allowed (objection overruled)
4/1/2009	Justin Crawford	Telephone conference with Clerk of the Court regarding filing procedures for Protective Orders.	0.20	\$21.00	Allowed (objection overruled)
4/1/2009	Tom Van Hoozer	Prepare and forward to opposing counsel joint motion for entry of a protective order.	0.50	\$177.50	Allowed (objection overruled)
4/2/2009	Justin Crawford	Prepare Joint Motion and Order for Protective Order for filing. File Joint Motion. Prepare email correspondence forwarding Proposed Order to Judge.	1.00	\$105.00	Allowed (objection overruled)
4/2/2009	Tom Van Hoozer	Finalize and file Motion for Protective Order.	0.10	\$35.50	Allowed (objection overruled)
4/7/2009	Justin Crawford	Begin review of prosecution file in preparation for production of documents to opposing counsel.	1.00	\$105.00	Allowed (objection overruled)
4/7/2009	Tom Van Hoozer	Work on Xcaper's responses to Essex PB&R First Interrogatories and telephone conference [redacted].	3.50	\$1242.50	Allowed (objection overruled)
4/8/2009	Justin Crawford	Continue review of prosecution file in preparation for production of documents to opposing counsel.	1.10	\$115.50	Allowed (objection overruled)
4/8/2009	Tom Van Hoozer	Work on Xcaper's responses to Essex First Request for Production of Documents.	0.80	\$284.00	Allowed (objection overruled)
4/9/2009	Justin Crawford	Finalize review of prosecution file in preparation for production of documents to opposing counsel.	0.60	\$63.00	Allowed (objection overruled)

4/13/2009	Justin Crawford	Prepare and fax Mediation Memorandum with enclosures to Mr. Sher.	0.30	\$31.50	Allowed (objection overruled)
4/13/2009	Tom Van Hoozer	Prepare and send Mediation Statement to Mediator.	0.90	\$319.50	Allowed (objection overruled)
4/14/2009	Tom Van Hoozer	Work on answers to Plaintiff's First Set of Interrogatories to Xcaper.	3.60	\$1278.00	Allowed (objection overruled)
4/15/2009	Justin Crawford	Prepare Defendant's discovery responses for forwarding to opposing counsel.	0.30	\$31.50	Allowed (objection overruled)
4/15/2009	Tom Van Hoozer	Work on responses to Requests for Production.	2.20	\$781.00	Allowed (objection overruled)
4/15/2009	Tom Van Hoozer	Work on preparation, forwarding and service of responses to Requests for Production.	1.50	\$532.50	Allowed (objection overruled)
4/16/2009	Justin Crawford	Review of filed pleadings and docketing of dates for future attorney reference. Prepare discovery responses and specified documents for mailing to client.	0.40	\$42.00	Allowed (no objection)
4/16/2009	Tom Van Hoozer	E-mail to opposing counsel regarding exchange of claim construction dates review.	0.10	\$35.50	Allowed (objection overruled)
4/16/2009	Tom Van Hoozer	E-mail to opposing counsel regarding preliminary claim construction, telephone conference with Mr. Peter Finch, Mr. Barry Hall regarding [redacted].	0.20	\$71.00	Allowed (objection overruled)
4/27/2009	Tom Van Hoozer	Conference with Mr. Peter D. Finch in preparation for mediation. Mediation in St. Louis.	8.40	\$2982.00	Allowed (objection overruled)

4/28/2009	Justin Crawford	Phone conference with Linda Hall Library. Prepare and fax application and letter to Linda Hall Library. Research of specified publication per Mr. Van Hoozer.	0.80	\$84.00	Allowed (objection overruled)
4/28/2009	Tom Van Hoozer	Telephone conference with mediator regarding revised offer from Essex and report to Mr. Finch.	0.30	\$106.50	Allowed (objection overruled)
5/8/2009	Tom Van Hoozer	Legal research regarding common law experimental use defense.	0.90	\$319.50	Allowed (objection overruled)
5/18/2009	Tom Van Hoozer	Review Essex's Motion to Dismiss.	0.70	\$248.50	Allowed (no objection)
5/19/2009	Justin Crawford	Phone conference with Judge Webber's clerk regarding sealing documents. Prepare Declaration of Mr. Van Hoozer.	0.70	\$73.50	Allowed (objection overruled)
5/21/2009	Justin Crawford	Finalize Declaration of Mr. Van Hoozer. Prepare exhibits to Suggestions in Support of Motion for Summary Judgment. Prepare Suggestions in Support of Motion for Summary Judgment. File and forward Motion and Suggestions in Support of Motion for Summary Judgment with all accompanying declarations and exhibits.	6.80	\$714.00	Allowed (objection overruled)
5/22/2009	Justin Crawford	Review of filed pleadings and docketing of dates for future attorney reference. Prepare and forward copies of filed documents to client.	0.70	\$73.50	Allowed (no objection)



5/26/2009	Justin Crawford	File Opposition to Motion to Dismiss.	0.30	\$31.50	Allowed (no objection)
5/26/2009	Tom Van Hoozer	Legal research; prepare and file memorandum in opposition to Essex's motion to dismiss.	3.20	\$1136.00	Allowed (no objection)
5/28/2009	Tom Van Hoozer	E-mail exchange with opposing counsel regarding their request for a status conference and report to Mr. Finch.	0.20	\$71.00	Allowed (no objection)
5/28/2009	Tom Van Hoozer	Legal research and work on motion for Rule 11 Sanctions and memorandum in support.	3.20	\$1136.00	Allowed (objection overruled)
5/29/2009	Tom Van Hoozer	Teleconference with Plaintiff's attorney jurisdiction regarding Plaintiff's request for a status conference.	0.20	\$71.00	Allowed (no objection)
6/3/2009	Tom Van Hoozer	Legal Research for Memorandum in Support of Motion for Sanctions under Rule 11 and 35 USC Section 285.	1.20	\$426.00	Allowed (objection overruled)
6/3/2009	Tom Van Hoozer	Work on Memorandum in Support of Motion for Sanctions Under Rule 11 and 35 USC 285.	1.00	\$355.00	Allowed (objection overruled)
6/4/2009	Tom Van Hoozer	Telephone conference with Judge Webber's clerk re Mr. Janoski's call requesting status conference, his reply to Xcaper's response to motion to dismiss and request to stay; and work on Memorandum in Support of Motion for Sanctions under Rule 11 and 35 USC Section 285.	4.90	\$1739.50	Allowed (objection overruled)

6/5/2009	Justin Crawford	Preparation of exhibits for Motion for Sanctions. Preparation and forwarding of Motion and Memorandum in Support of Motion for Sanctions. Prepare Motion to Withdraw Confidential Status. Review of filed pleadings and docketing of dates for future attorney reference.	2.80	\$294.00	Allowed (objection overruled)
6/5/2009	Tom Van Hoozer	Review Essex's reply to Xcaper's opposition to Motion to Dismiss.	0.60	\$213.00	Allowed (no objection)
6/5/2009	Tom Van Hoozer	Work on motion and memorandum in support of Rule 11 and 35 USC Section 285 sanctions.	0.60	\$213.00	Allowed (objection overruled)
6/5/2009	Tom Van Hoozer	Work on motion to withdraw confidential designation and review voice message from opposing counsel.	0.60	\$213.00	Allowed (objection overruled)
6/8/2009	Justin Crawford	File and forward Motion to Withdraw Confidential Status.	0.30	\$31.50	Allowed (objection overruled)
6/9/2009	Justin Crawford	Review of filed pleadings and docketing of dates for future attorney reference.	0.40	\$42.00	Allowed (no objection)
6/9/2009	Tom Van Hoozer	Review and respond to Attorney Janoski re withdrawal of motion to declassify.	0.20	\$71.00	Allowed (objection overruled)
6/10/2009	Tom Van Hoozer	Telephone conference with Judge's clerk to take motion off schedule.	0.10	\$35.50	Allowed (objection overruled)
6/12/2009	Tom Van Hoozer	File with the Court and forward to opposing counsel the Response to Plaintiff's Motion to Stay. File with the Court and forward to opposing counsel Defendant's Motion to Strike.	0.60	\$63.00	Allowed (objection overruled)

6/15/2009	Justin Crawford	Forward filed pleadings and requested documents to the client.	0.30	\$31.50	Allowed (no objection)
6/16/2009	Justin Crawford	Research of cases for use at the Motion Hearing in the Eastern District of Missouri.	1.40	\$147.00	Allowed (no objection)
6/16/2009	Tom Van Hoozer	Research and prepare for oral argument in Essex's Motion to Dismiss Without Prejudice.	1.80	\$639.00	Allowed (no objection)
6/16/2009	Tom Van Hoozer	Review response to Motion to Strike filed by Essex.	0.60	\$213.00	Allowed (objection overruled)
6/16/2009	Tom Van Hoozer	Prepare exhibits and notes for oral argument opposing Essex's motion to dismiss without prejudice.	2.10	\$745.50	Allowed (no objection)
6/17/2009	Tom Van Hoozer	Drive to U.S. District Court in St. Louis (at half rate).	4.00	\$710.00	Allowed (objection overruled)
6/17/2009	Tom Van Hoozer	Prepare for hearing.	0.80	\$284.00	Allowed (no objection)
6/17/2009	Tom Van Hoozer	Hearing before Judge Webber on Plaintiff's Motion to Dismiss and post-hearing conferences with Mr. Janoski.	1.20	\$426.00	Allowed (no objection)
6/17/2009	Tom Van Hoozer	Return drive to Kansas City from St. Louis (at half rate).	4.00	\$710.00	Allowed (objection overruled)
6/19/2009	Justin Crawford	Review of filed pleadings and docketing of dates for future attorney reference.	0.30	\$31.50	Allowed (no objection)
6/19/2009	Tom Van Hoozer	Review Memorandum and Order of Judge Webber, e-mail to Mr. Finch forwarding same and discussing hearing.	0.30	\$106.50	Allowed (no objection)

6/19/2009	Tom Van Hoozer	Telephone conference with Mr. Finch to discuss [redacted].	0.10	\$35.50	Allowed (no objection)
6/30/2009	Justin Crawford	File Motion and Memorandum for Sanctions.	0.40	\$42.00	Allowed (objection overruled)
6/30/2009	Justin Crawford	Attend to filing Rule 11 Motion.	0.10	\$35.50	Allowed (objection overruled)
7/2/2009	Tom Van Hoozer	Respond to June e-mail from Mr. Janoski.	0.20	\$71.00	Allowed (no objection)
7/2/2009	Tom Van Hoozer	Review e-mail and proposed covenant not to sue [redacted].	0.30	\$106.50	Allowed (objection overruled)
7/2/2009	Tom Van Hoozer	Reply to e-mail from attorney Janoski regarding proposed agreement for covenant not to sue.	0.20	\$71.00	Allowed (objection overruled)
7/9/2009	Tom Van Hoozer	Review of e-mail from Mr. Janoski, telephone conference with Mr. Janoski, regarding plaintiff's request for extension of time to respond to Rule 11 motion.	0.20	\$71.00	Allowed (objection overruled)
7/9/2009	Tom Van Hoozer	Report to Mr. Finch on [redacted].	0.20	\$71.00	Allowed (objection overruled)
7/10/2009	Justin Crawford	Phone conference with Judge Webber's clerk regarding notification to the Court. Research for Statement Regarding Covenant Not to Sue Agreement. Prepare and File Statement Regarding Covenant Not to Sue Agreement.	0.80	\$84.00	Allowed (objection overruled)

7/10/2009	Tom Van Hoozer	Review Plaintiff's Statement to the Court regarding covenant not to sue agreement, review and reply to e-mail from Mr. Finch, telephone conference with Mr. Finch, legal research re operative effect of covenant not to sue covering only past and current activities, and prepare and file Defendant's Statement on Covenant Not to Sue Agreement.	1.90	\$647.50	Allowed (objection overruled)
7/13/2009	Justin Crawford	File Reply to Plaintiff's Response to Statement for Covenant Not to Sue Agreement. Review and indexing of filed pleadings for future attorney reference.	0.60	\$63.00	Allowed (objection overruled)
7/13/2009	Tom Van Hoozer	Review Plaintiff's Response to Defendant's Statement on covenant not to sue and prepare and file Defendant's Reply.	1.10	\$390.50	Allowed (objection overruled)
7/14/2009	Justin Crawford	Review of filed pleadings and docketing of dates for future attorney reference. Research of forms and procedures for filing a motion for attorneys' fees. Prepare spreadsheet of billable time to use as an exhibit to the motion for attorneys fees.	3.10	\$325.50	Allowed (objection overruled)
7/14/2009	Tom Van Hoozer	Review and report to Mr. Finch Court's Order, telephone conference with Mr. Finch	0.20	\$71.00	Allowed (no objection)
7/17/2009	Justin Crawford	Review of filed pleadings and docketing of dates for future attorney reference. Prepare spreadsheet of billable time for Motion for Attorneys Fees. Phone conference with Clerk of the Court regarding use of electronic equipment.	2.00	\$210.00	Allowed (no objection)

7/18/2009	Tom Van Hoozer	Review of Plaintiff's response to Rule 11 Motion and supporting affidavits.	1.20	\$426.00	Allowed (objection overruled)
7/20/2009	Justin Crawford	Prepare exhibits to the Declaration of Thomas Van Hoozer.	0.50	\$52.50	Allowed (no objection)
7/20/2009	Tom Van Hoozer	Work on affidavit of Thomas H. Van Hoozer in support of Request for attorneys fees and costs.	1.70	\$603.50	Allowed (no objection)
7/21/2009	Justin Crawford	Prepare and revise spreadsheet of billable time. File Submission of Affidavit of Thomas Van Hoozer and supporting exhibits. Review and indexing of filed pleadings for future attorney reference. Assist with the preparation of exhibits and case research for hearing.	3.40	\$357.00	Allowed (no objection)
7/21/2009	Tom Van Hoozer	Prepare and file submission of Thomas H. Van Hoozer and finalize affidavit of Thomas H. Van Hoozer.	0.50	\$177.50	Allowed (no objection)
7/21/2009	Tom Van Hoozer	Review response of Essex to Motion for Sanctions, legal research and work on oral argument for hearing on July 22.	3.80	\$1349.00	Allowed (objection overruled)
7/22/2009	Justin Crawford	Research of cases in preparation for motion hearing.	0.30	\$31.50	Allowed (objection overruled)
7/22/2009	Tom Van Hoozer	Drive to St. Louis for hearing at U.S. District Court (at half rate).	4.50	\$798.75	Allowed (objection overruled)
7/22/2009	Tom Van Hoozer	Prepare for hearing.	0.70	\$248.50	Allowed (no objection)

7/22/2009	Tom Van Hoozer	Conference in chambers with Judge Webber and continuance of hearing.	0.30	\$106.50	Allowed (no objection)
7/22/2009	Tom Van Hoozer	Return drive to Kansas City (at half rate).	4.50	\$798.75	Allowed (objection overruled)
7/23/2009	Justin Crawford	Draft, revise and file Xcaper's Request to Reschedule Hearing, or in the alternative, Motion for Extension of Time to Reply.	1.10	\$115.50	Allowed (no objection)
7/23/2009	Tom Van Hoozer	Telephone conference with Mr. Finch to discuss continuation of hearing, further strategy.	0.20	\$71.00	Allowed (no objection)
7/24/2009	Justin Crawford	Review of filed pleadings and docketing of dates for future attorney reference. Prepare and file Additional Submission for Attorneys Fees.	0.50	\$52.50	Allowed (no objection)
7/24/2009	Tom Van Hoozer	Prepare and file submission for additional claim for attorneys fees and costs to the Court.	0.30	\$106.50	Allowed (no objection)
7/27/2009	Justin Crawford	Research of case citations from Plaintiff's recent case filings. Organization and preparation of documents for use at hearing.	1.00	\$105.00	Allowed (objection overruled)
7/27/2009	Tom Van Hoozer	Report settlement offer to Mr. Finch.	0.10	\$35.50	Allowed (objection overruled)
7/27/2009	Tom Van Hoozer	Reply to Mr. Finch e-mail regarding settlement offer.	0.20	\$71.00	Allowed (objection overruled)
7/28/2009	Justin Crawford	Preparation of documents and electronic equipment for motion hearing.	1.60	\$168.00	Allowed (objection overruled)

7/28/2009	Tom Van Hoozer	Prepare for hearing to present argument on motion to dismiss, motion for summary judgment and motion for sanctions.	4.20	\$1491.00	Allowed (objection overruled)
7/29/2009	Tom Van Hoozer	Drive to St. Louis for hearing at U.S. District Court (at half rate).	4.40	\$781.00	Allowed (objection overruled)
7/29/2009	Tom Van Hoozer	Prepare for hearing on plaintiff's motion to dismiss, Xcaper's motion to strike, Xcaper's motion for summary judgment, Xcaper's motion for sanctions.	1.20	\$426.00	Allowed (objection overruled)
7/29/2009	Tom Van Hoozer	Hearing on Essex Motion for voluntary dismissal, motion for summary judgment.	1.50	\$532.50	Allowed (objection overruled)
7/29/2009	Tom Van Hoozer	Prepare for afternoon arguments on motion for summary judgment, motion for sanctions.	1.10	\$390.50	Allowed (objection overruled)
7/29/2009	Tom Van Hoozer	Hearing on Xcaper Motion for Sanctions under Rule 11.	1.70	\$603.50	Allowed (objection overruled)
7/29/2009	Tom Van Hoozer	Return travel to Kansas City (at half rate).	4.30	\$763.25	Allowed (objection overruled)
7/30/2009	Tom Van Hoozer	E-mail to Peter Finch forwarding minute order and report oral argument on pending motions.	0.20	\$71.00	Allowed (no objection)

Date	Disbursement	Amount Sought	Allowed or Denied
11/19/2008	Disbursement for Pro Hac Vice Fee - E.D. of Missouri	\$100.00	Allowed (no objection)
12/1/2008	Disbursement for Federal Express	\$14.11	Denied (objection sustained)
12/1/2008	Disbursement for Federal Express	\$20.08	Denied (objection sustained)



4/27/2009	Mediator Fees paid directly to mediator	\$2156.25	Allowed (objection overruled)
5/1/2009	Disbursement for Federal Express	\$50.22	Denied (objection sustained)
5/28/2009	Westlaw Usage for legal research	\$10.22	Allowed (objection overruled)
5/28/2009	Disbursement for Federal Express	\$24.57	Denied (objection sustained)
5/28/2009	Disbursement for Federal Express	\$24.57	Denied (objection sustained)
6/4/2009	Disbursement for Federal Express	\$18.87	Denied (objection sustained)
6/16/2009	Westlaw Usage for legal research	\$26.83	Allowed (objection overruled)
7/10/2009	Westlaw Usage for legal research	\$94.56	Allowed (objection overruled)
7/21/2009	Westlaw Usage for legal research	\$97.33	Allowed (objection overruled)
7/22/2009	Westlaw Usage for legal research	\$85.46	Allowed (objection overruled)
7/27/2009	Westlaw Usage for legal research	\$365.61	Allowed (objection overruled)

Of the \$42,403.93 in fees and costs that Defendant has requested, this Court will allow all but \$321.92. Thus, in the event that Plaintiff refiles this case in this or any other court, Plaintiff will be required to reimburse Defendant fees and costs incurred in defending this cause of action, in the amount of \$42,082.01.

Accordingly,

**IT IS HEREBY ORDERED** that Xcaper Industries, LLC's Claim for Fees and Costs [doc. #52] is **GRANTED, in part**, and **DENIED, in part**, as set forth above.

Dated this 9th Day of March, 2010.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER  
UNITED STATES DISTRICT COURT